



[Billing Code 4410-05]

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP-1090-F]

RIN 1120-AA85

Designation of Offenses

AGENCY: Federal Bureau of Prisons.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons (Bureau) removes rules which designated various offenses as sexual offenses for purposes of 18 U.S.C. 4042(c) because that provision, which necessitated regulations, has been repealed in relevant part.

DATES: This rule is effective on [insert date 30 days after publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION:

The Bureau removes rules which designated various offenses as sexual offenses for purposes of 18 U.S.C. 4042(c) because that provision, which necessitated regulations, has been repealed in relevant part. The Bureau published a proposed rule

on this subject on February 8, 2013 (78 FR 9353). We received no comments on the proposed rule.

Previously, section 4042(c) of Title 18, United States Code, effective November 26, 1998, provided for notification of sex offender release and certain related functions to facilitate effective sex offender registration and tracking. Notifications were required to be made for persons convicted of the federal offenses noted in subsection (c)(4)(A) through (D). Subsection (c)(4)(E) authorized the Attorney General to designate other offenses as sexual offenses for purposes of subsection (c). The Attorney General delegated this authority to the Director of the Bureau of Prisons. (See 63 FR 69386, December 16, 1998, "1998 interim rule".)

The 1998 interim rule designated additional offenses which are to be considered sexual offenses for purposes of 18 U.S.C. 4042(c). These additional designations, listed in current § 571.72, include state sexual offenses, District of Columbia Code sexual offenses, and certain Uniform Code of Military Justice offenses.

The regulations, therefore, were specifically promulgated in accordance with language in § 4042(c)(4)(E) providing that offenses in addition to those specifically enumerated at §

4042(c)(4)(A)-(D) may be "designated by the Attorney General as a sexual offense for the purposes of this subsection."

However, 18 U.S.C. 4042(c)(4) was repealed by the Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). Because the revised § 4042(c) requires release notice for persons required to register under SORNA, the Bureau no longer needs to separately designate sexual offenses in addition to those set forth by the statute. The offenses previously listed in the regulation are generally incorporated in SORNA's comprehensive list of covered offenses, thereby rendering the Bureau's current regulations in subpart H of 28 CFR part 571 unnecessary. We therefore now remove and reserve 28 CFR part 571, subpart H.

Executive Orders 12866 and 13563 - Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation and in accordance with Executive Order 13563 "Improving Regulation and Regulatory Review" section 1(b) General Principles of Regulation.

The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order

13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: this rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 571

Prisoners.

Charles E. Samuels, Jr.
Director, Bureau of Prisons

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301 and 28 U.S.C. 509, 510, and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 571 as set forth below.

SUBCHAPTER D - COMMUNITY PROGRAMS AND RELEASE

PART 571 - RELEASE FROM CUSTODY

1. The authority citation for 28 CFR part 571 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3568-3569

(Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082

(Repealed in part as to offenses committed on or after November 1, 1987), 4161-4166 and 4201-4218 (Repealed as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5031-5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95-0.99, 1.1-1.10.

Subpart H - [Removed and Reserved]

2. Subpart H, Designation of Offenses for Purposes of 18 U.S.C. 4042(c) is removed and reserved.

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